

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JUAN CALDERON,

Plaintiff,

v.

ROB BONTA, et al.,

Defendants.

No. 2: 23-cv-1064 WBS KJN P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. For the reasons stated herein, the undersigned recommends that plaintiff's motions for injunctive relief filed October 23, 2023, and November 3, 2023 (ECF Nos. 25, 27, 28) be denied.

Background

On August 3, 2023, the undersigned recommended dismissal of this action on the grounds that plaintiff's amended complaint failed to state a potentially colorable claim for relief. (ECF No. 12.) The undersigned found that defendant California Attorney General Bonta was entitled to absolute immunity as to those claims related to his official duties as California State Attorney General. (*Id.* at 2.) As to the claims unrelated to defendant Bonta's official duties, the undersigned found that plaintiff failed to adequately link defendant Bonta to these claims. (*Id.* at 2-3.) The undersigned also found that plaintiff's claims unrelated to defendant Bonta's official duties were

1 vague, conclusory and largely unbelievable. (Id. at 3.)

2 On August 28, 2023, the Honorable William B. Shubb adopted the August 3, 2023
3 findings and recommendations and judgment was entered. (ECF Nos. 16, 17.)

4 On September 22, 2023, and September 25, 2023, plaintiff filed notices of appeal from the
5 August 28, 2023 judgment. (ECF Nos. 18, 19.)

6 As stated above, plaintiff filed the pending motions for injunctive relief on October 23,
7 2023 and November 3, 2023. (ECF Nos. 25, 27, 28.)

8 On December 6, 2023, the Ninth Circuit Court of Appeals dismissed plaintiff's appeal for
9 failure to prosecute. (ECF No. 32.) The mandate was issued twenty-one days thereafter. (Id.)

10 Discussion

11 Although difficult to understand, it appears that the claims raised in the pending motions
12 for injunctive relief are related to the claims raised in the amended complaint. Plaintiff also
13 attaches an amended complaint to the motion for injunctive relief filed October 23, 2023. (ECF
14 No. 25-1 at 5-18.)

15 Plaintiff filed the pending motions for injunctive relief and amended complaint at the time
16 his appeal was pending in the Ninth Circuit. Therefore, this court did not have jurisdiction over
17 plaintiff's motions for injunctive relief and proposed amended complaint at the time they were
18 filed. Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982) ("The filing of a
19 notice of appeal ... confers jurisdiction on the court of appeals and divests the district court of its
20 control over those aspects of the case involved in the appeal.").

21 This action ended with the dismissal of plaintiff's appeal by the Ninth Circuit. See Hall v.
22 Hall, 138 S. Ct. 1118, 1123-24 (2018) (a final decision ends the litigation on the merits and leaves
23 nothing for the court to do but execute the judgment).

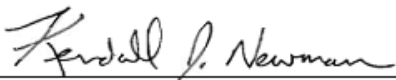
24 Accordingly, the undersigned recommends that plaintiff's motions for injunctive relief,
25 including the request to file a proposed amended complaint contained in the motion for injunctive
26 relief filed October 23, 2023, be denied because the court did not have jurisdiction over these
27 motions when they were filed and this action is now over.

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1 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff's motions for injunctive
2 relief and request to file a proposed amended complaint (ECF Nos. 25, 27, 28) be denied.

3 These findings and recommendations are submitted to the United States District Judge
4 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
5 after being served with these findings and recommendations, plaintiff may file written objections
6 with the court and serve a copy on all parties. Such a document should be captioned
7 "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that
8 failure to file objections within the specified time may waive the right to appeal the District
9 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

10 Dated: January 26, 2024

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12 KENDALL J. NEWMAN
13 UNITED STATES MAGISTRATE JUDGE
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